

In re:)
)
CAPSTONE PEDIATRICS, PLLC,)
)
Debtor.)
)
)
_____)
)
CDS BUSINESS SERVICES, INC.)
d/b/a NEWTEK BUSINESS CREDIT,)
)
Plaintiff,)
)
)
v.)
)
)
AMERICA CARES TRUST d/b/a)
CARENATION,)
)
Defendant.)

Case No. 3:19-bk-1971

Chapter 11

Adv. Proc. No. 3:20-ap-90140

Pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, and Rule 9075-1 of the Local Rules of this Court, Defendant America Cares Trust, Inc., a Tennessee not for profit corporation doing business as CareNation (hereinafter “**CareNation**”), by and through the undersigned counsel, respectfully submits this Supplemental Memorandum and Notice of No Opposition in support of its Expedited Motion for Limited Relief from the “Agreed Order Granting Expedited Motion for Preliminary Injunction” (Docket Entry 12) (hereinafter the “**Preliminary Injunction**”). CareNation further seeks a continuance of the Pretrial Conference in this matter, currently set for November 4, 2020 at 1:45 p.m. (Docket Entry 6).

CareNation moves this Court to enter an expedited order, or otherwise to conduct an expedited hearing, for the purpose of granting limited relief from the Preliminary Injunction to obtain a disbursement of all funds on deposit, currently believed to be in an amount not less than \$250,000.00¹, in the Bank of America account in the name of the Debtor bearing account number XXXXXXX239 (the “**Operating Account**” or “**Account *239**” as hereinafter defined²). All remaining funds in the Operating Account, hereinafter referred to as the “**Residual Balance**,” belong to CareNation and are either proceeds from CareNation’s accounts receivable or PPP Funds.

At the time of CareNation’s filing of the Second Expedited Motion, CDS, by and through its counsel, advised the undersigned counsel via e-mail dated October 27, 2020 that CDS would not object to a Motion “requesting disbursement of the remaining balances in account 239.” A true and correct copy of that e-mail from CDS’ counsel of record is attached hereto as **Exhibit 1**.

After the filing and service of the Second Expedited Motion, the Debtor, by and through its counsel of record, advised the undersigned counsel via e-mail dated October 27, 2020 that the Debtor “had no opposition to the Motion.” A true and correct copy of that e-mail from Debtor’s counsel of record is attached hereto as **Exhibit 2**. Immediately prior to the filing of this Supplemental Memorandum, counsel for the U.S. Trustee submitted an e-mail to the undersigned counsel on October 28, 2020, advising that the U.S. Trustee had no objection to entry of an order granting the relief sought.

Based upon the foregoing notices of no opposition from the Debtor, the Trustee or CDS to the relief sought and disbursement of the Residual Balance from the Operating Account (referred to in the Expedited Motion, CareNation respectfully submits that there is no need for an expedited evidentiary hearing. As stated in the Second Expedited Motion, CareNation is in dire need of the Residual Balance to fund operational costs and payroll obligations. CareNation therefore prays that this Court enter an Order modifying the Preliminary Injunction and ordering that the balance of the funds in Account *239 be disbursed by Bank of America to CareNation immediately upon entry of such Order, and that the Pretrial Conference be continued from November 4, 2020 to such time as is convenient for the Court and the parties.

¹ Neither of the parties have direct knowledge of the exact amount of the current balance in Account *239, however, the parties generally agree that the approximate balance was \$540,000 as of September 16, 2020, and thereafter, as a result of the Agreed Order Modifying Preliminary Injunction, \$204,928.67 was transferred out of the account as a result of the 837 Transfer, and another \$72,000 was released to CareNation. It is believed that Bank of America has assessed fees of \$3,000 on Account *39 since the entry of that Agreed Order. Therefore, the parties roughly estimate that the current balance is between \$250,000.00 and \$260,000.00.

² This account has previously been referred to as the “Carve-Out” Account, and for consistency’s sake, the Motion will replace quoted references to “Carve-Out” with “[Operating].”

Respectfully submitted,

BONE McALLESTER NORTON PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on October 28, 2020. Notice of this filing was sent by operation of the Court's electronic filing system to all those parties specifically requesting electronic service and as indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system. In addition, notice was sent in the manner set forth in section 3, above.

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